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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In re Applications of)	WT DOCKET NO. 96-41
)	
LIBERTY CABLE CO., INC.	)	File Nos.
	)	708777 (WNTT370)
For Private Operational Fixed Microwave	)	708778, 713296 (WNTM210)
Service Authorization and Modifications	)	708779 (WNTM385)
New York, New York	)	708780 (WNTM555)
	)	708781, 709426, 711937 (WNTM212)
	)	709332 (NEW)
	)	712203 (WNTW782)
	)	712218 (WNTY584)
	)	712219 (WNTY605)
	)	712295 (WNTX889)
	)	713300 (NEW)
	)	717325 (NEW)

To: Administrative Law Judge Richard L. Sippel

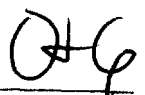
PETITION FOR LIMITED INTERVENTION

Freedom New York, L.L.C. ("Freedom"), by its attorneys and pursuant to Section 1.223(c) of the Commission's Rules,^{1/} hereby submits its Petition for Limited Intervention in the above-captioned proceeding. In particular, Freedom seeks leave to intervene for the limited purpose of filing an Opposition to the Motion to Enlarge the Issues ("*Motion*") filed by Time Warner Cable of New York City and Paragon Cable Manhattan (collectively "Time Warner") on April 22, 1996 and the Supplement to Motion to Enlarge Issues ("*Supplement*") filed on April 29, 1996 in the instant proceeding.

Freedom has been forcibly interjected into the Liberty Cable Co. ("Liberty") proceeding by

^{1/} 47 C.F.R. §1.223(c) (1995).

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Time Warner's factual misstatements made in its *Motion* and *Supplement* concerning a corporate transaction between Freedom and Liberty.^{2/} Accordingly, Freedom submits its petition subject to Section 1.223(c) of the Commission's Rules governing petitions for intervention filed subsequent to the general 30-day window established by the Commission.^{3/} Section 1.223(c) allows a party to show special circumstances which prevented it from seeking intervention earlier in a proceeding.

The petitioner must:

. . . show how such petitioner's participation will assist the Commission in the determination of the issues in question, must set forth any proposed issues in addition to those already designated for hearing, and must set forth reasons why it was not possible to file a petition within the time prescribed . . .

This petition meets all three prongs of the standards set forth in Section 1.223(c). First, Freedom clearly will assist the Commission in a determination as to the issues proposed by Time Warner because such issues directly bring into question an asset purchase transaction to which Freedom is a party. In its above-referenced pleadings, Time Warner erroneously characterizes the

^{2/} Section 1.223(c) of the Commission's Rules contemplates limited intervention with regard to particular issues, or to a particular stage of the proceeding. Freedom intends to participate only to the extent of addressing the erroneous claims made by Time Warner concerning its *Motion* and *Supplement*, and not to any other aspects of this hearing proceeding involving alleged actions by Liberty which occurred prior to the referenced transaction between Freedom and Liberty.

^{3/} Section 1.223(b) of the Commission's Rules (47 C.F.R. §1.223(b) (1995)) governing petitions for intervention states that:

[A] person desiring to participate as a party in any hearing may file a petition for leave to intervene not later than 30 days after the publication in the Federal Register of the full text or summary of the order designating an application for hearing . . .

The *Hearing Designation Order*, FCC 96-85 (March 5, 1996), in the instant proceeding appeared in the Federal Register on March 22, 1996 (61 Fed. Reg. 11839), triggering a 30-day filing period which closed on April 22, 1996.

nature of an asset purchase agreement pursuant to which Freedom acquired from Liberty certain assets used by Liberty to provide competitive multichannel video distribution services in New York City. In this regard, Freedom incorporates by reference herein its “Opposition to Motion to Enlarge Issues” filed this same date, wherein it sets out in detail the particulars of this asset purchase agreement, and refutes the unsupported and misinformed allegations made by Time Warner which suggest that Freedom acquired an equity stake in Liberty (rather than merely a purchase of certain assets). Time Warner also implies that a number of microwave authorizations, which were specifically excluded from the assets purchased in the transaction between Liberty and Freedom, are actually under the ownership and control of Freedom. Accordingly, Freedom’s participation at this juncture is necessary to “assist the Commission in the determination of the issues in question”, specifically the nature of Freedom’s relationship to Liberty and the ownership and operation of the FCC authorizations that are the subject of this hearing proceeding. In order to develop a complete and accurate record, Freedom must be permitted to proffer evidence regarding its status as an independent corporation and as the recipient of certain transmission services from Liberty pursuant to an executed Transmission Services Agreement.

In incorporating by reference its Opposition to Motion to Enlarge Issues, Freedom meets the second prong of Section 1.223(c) requiring that a petition set forth any proposed issues in addition to those already designated for hearing. The Opposition details and corrects the factual misstatements and unsupported assumptions which Time Warner is attempting to interject into the proceeding at this time with its above-referenced pleadings

Finally, Freedom submits that it was unable to file a petition within the time prescribed by Section 1.223(b). Petitioner was not a party in interest in the Liberty proceeding until Time Warner

filed its Motion to Enlarge Issues on April 24, 1996 -- two days after the 30-day filing window had closed -- and thereby implicating Freedom's reputation and fitness as a licensee. Thus, Freedom had no standing as an intervenor at the time the filing period had run on April 22, 1996. It is seeking intervention at this point in the proceeding only to address the erroneous assertions made by Time Warner with regard to the ownership of Liberty and the operation of Freedom's subscription television service in New York City.

In several instances, the Commission has permitted late intervention by a petitioner whose reputation and standing before the Commission has been called into question during a proceeding. In *Quality Broadcasting Corp.*, the Commission allowed such intervention by a minority stockholder of a licensee corporation (at the time of the alleged acts) in order to submit evidence to "refute the erroneous testimony against him" that might affect "his future ability to earn a livelihood in the broadcast industry".^{4/} The Commission noted that had the individual timely sought intervention, his request would have been denied since, at the time the initial proceeding took place, his unity of interest with the licensee would have precluded him from participating separately from the corporate licensee.^{5/} At the time the Liberty proceeding was designated for hearing, it similarly would have been denied standing as a party. Only when the ownership of Liberty and Liberty's licenses, as well

^{4/} 4 RR 2d 865, 866 (1965); see also *West Jersey Broadcasting Co.*, (89 FCC 2d 469, 472-3 (1980).

^{5/} *Quality Broadcasting Corp.*, 4 RR 2d at 867. We note also that in *Quality Broadcasting Corp.*, the Petitioner was granted leave to intervene *after* the hearing had already been completed, which necessitated a remand and reopening of the record, with a resultant impact on the timing of a final decision in that proceeding. In the instant proceeding, however, the evidentiary hearing has not yet begun. Therefore, there will be no adverse impact on the procedural schedule in this proceeding from a grant of Petitioner's request.

as Freedom's license applications, were called into question, and thereby Freedom's reputation and fitness as a licensee called into question, by Time Warner's *Motion* did Freedom obtain party status.

Whether the FCC will grant leave to intervene at a late date additionally turns on a showing that the petitioner's interest cannot be adequately protected by a party to the proceeding, and thus, it must intervene as a separate party. In *Palmetto Communications Co.*,^{6/} a petitioner who was claiming to have withdrawn as a 50 percent general partner in an AM applicant was permitted to intervene in a hearing on issues added to determine whether the applicant had misrepresented its ownership structure or failed to report any changes its ownership structure where the applicant's counsel clearly did not represent the petitioner's interests. In particular, Palmetto had in an earlier proceeding represented that petitioner was a Palmetto partner. Another licensee filed a Motion to Reopen the Record and to Enlarge the Issues, disputing petitioner's status as a party, and raising the issue of candor as to Palmetto's representation of its ownership structure. Palmetto asserted that despite petitioner's attempted withdrawal as a partner two years earlier, he remained a partner by operation of law. Petitioner was permitted to intervene for the purpose of demonstrating that he was no longer a principal of the corporation. In permitting late intervention in the *Palmetto* proceeding, the Review Board found that the evidence offered in the hearing could adversely affect petitioner's reputation and thus affect his ability to pursue other broadcast interests.

Although Freedom's interests are not in direct conflict with those of Liberty's, as was the case in *Palmetto*, Freedom cannot be assured that its concerns will be adequately protected by Liberty's participation alone in the proceeding. As noted earlier, Freedom and Liberty are two

^{6/} 6 FCC Rcd 5023 (Rev. Bd. 1991).

independent corporations. Liberty's primary interest in the instant proceeding is in proving *its* compliance with FCC Rules; it has no stake in preserving Freedom's reputation before the Commission. Clearly Liberty will focus its resources on those allegations made against it which reflect on its status as a licensee. Therefore, Freedom must have separate standing to adequately protect its own interests.

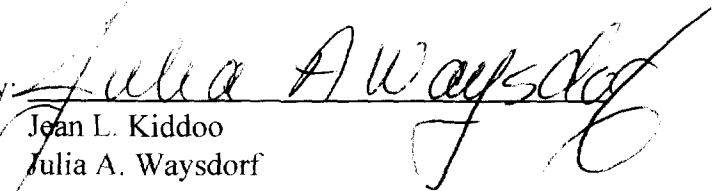
Moreover, Freedom's participation would not merely supplement Liberty's evidence, but would add relevant and distinct material necessary to a determination of the issues. In *American Telephone and Telegraph Co.*, the Commission denied an untimely filed petition by AT&T stockholders seeking intervention on the grounds that they "[had] not shown their interests to be different from those of respondent AT&T".^{7/} Freedom submits that it will proffer independent evidence from that which will be put forth by Liberty. Because its evidence is of decisional significance, Freedom's participation at this stage of the proceeding is necessary to develop a complete and accurate record.

^{7/} 7 RR 2d 515, 518 (1966).

For the reasons stated herein, Freedom should be permitted to intervene at this juncture in the Liberty proceeding for the purpose of vindicating its integrity and refuting Time Warner's unsubstantiated allegations. Accordingly, Freedom respectfully requests (1) that this Petition be granted; (2) that Freedom be granted leave to intervene in this proceeding for the limited purpose of addressing issues raised in Time Warner's *Motion* and *Supplement*; and (3) that the accompanying "Opposition to Motion To Enlarge Issues" be considered and made part of the record in this proceeding.

Respectfully submitted,

FREEDOM NEW YORK, L.L.C.

By: 
Joan L. Kiddoo
Julia A. Waysdorf

SWIDLER & BERLIN, Chartered
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007
(202) 424-7834

Dated: May 7, 1996

DECLARATION

I, Harry Rosenblum, hereby declare and state that the following is true and correct to the best of my knowledge, information and belief:

1. I am the President and Chief Operating Officer of Freedom New York, L.L.C. (“Freedom”).

2. I am familiar with the “Motion to Enlarge Issues” and the “Supplement to Motion to Enlarge Issues” filed by Time Warner Cable of New York City and Paragon Cable Manhattan (“Time Warner”) on April 22, 1996 and April 29, 1996, respectively.

3. I have also reviewed the accompanying “Petition for Limited Intervention” and the “Opposition to Motion to Enlarge” being filed concurrently herewith on behalf of Freedom, and am familiar with the contents thereof. Those contents are true and correct to the best of my knowledge, information and belief.

4. As discussed in those filings, the Motion filed by Time Warner contains significant factual inaccuracies concerning the asset purchase transaction entered into between Liberty and Freedom and the manner in which Freedom is providing multichannel video transmission services in New York City. Time Warner’s Supplement to Motion also raises, but does not substantiate, issues concerning Freedom’s integrity and candor with respect to its purchase of certain of Liberty’s assets and its filing of license applications with the FCC.

5. Prior to receiving copies of Time Warner’s Motion to Enlarge and Supplement to Motion to Enlarge, Freedom was unaware that any issues involving Freedom itself, Freedom’s purchase of certain assets from Liberty, or Freedom’s filing of microwave license applications with the FCC, would be raised or considered in this hearing proceeding. Therefore, Freedom had

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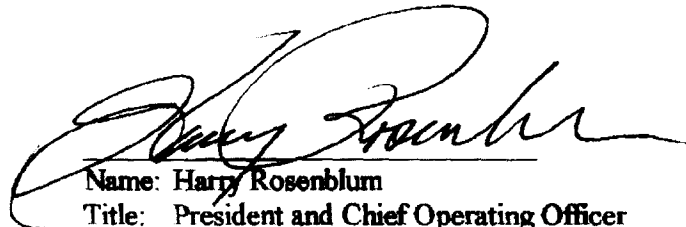
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no interest in intervening in this hearing proceeding prior to the filing of Time Warner's Motion and Supplement to Motion.

6. Freedom and Liberty are separate corporate entities. Therefore, Freedom is filing the accompanying Petition for Limited Intervention in order to protect its own interests and present the Commission with relevant material necessary to a determination of the issues raised in Time Warner's Motion and Supplement to Motion.

I declare under penalty of perjury that the foregoing is true and correct.

Executed May 7, 1996



Name: Harry Rosenblum

Title: President and Chief Operating Officer
Freedom New York, L.L.C.

CERTIFICATE OF SERVICE

I, Alma R. Myers, a secretary at the law firm of Swidler & Berlin, Chartered, hereby certify that a copy of the foregoing "Petition for Limited Intervention" was served this 7th day of May, 1996, via first class mail and facsimile, as noted upon the following:

Administrative Law Judge*
Richard L. Sippel
Federal Communications Commission
2000 L Street, NW, Suite 220
Washington, DC 20554

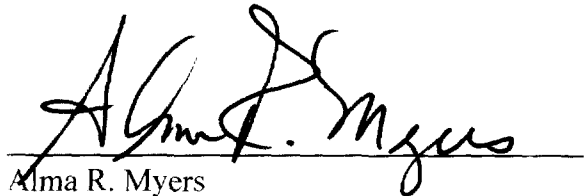
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Alma R. Myers

*By Hand

**Via facsimile and first class mail